

COUNCIL MINUTES

April 18, 2005

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on April 18, 2005 at 5:45 p.m.

COUNCIL PRESENT	COUNCIL ABSENT	OFFICERS PRESENT
Mayor Keno Hawker Rex Griswold Kyle Jones Tom Rawles Janie Thom Claudia Walters Mike Whalen	None	Mike Hutchinson Barbara Jones Debbie Spinner

Invocation by Reverend Jack D. O'Brien, Grace Fellowship Bible Church.

Pledge of Allegiance was led by Mason Duncan, Boy Scout Troop No. 430.

Mayor's Welcome.

Mayor Hawker welcomed everyone to the meeting. A videotaped presentation was aired that outlined meeting procedures and provided attendees with instructions relative to addressing the Council.

1. Consider all consent agenda items.

At this time, all matters on the consent agenda were considered or were removed at the request of a member of the Council. All items identified with an asterisk (*) were approved with one Council action.

It was moved by Councilmember Griswold, seconded by Vice Mayor Walters, that the consent agenda items be approved.

Carried unanimously.

*2. Approval of minutes of previous meetings as written.

Minutes from the January 20, February 16, March 23, 24, April 4 and 17, 2005 Council meetings.

3. Consider the following liquor license applications:

*3a. ROBERT L. NELSON, DIRECTOR

Special Event License application for Robert L. Nelson, Director, Anthology, Inc., a one-day civic event to be held on Friday, April 29, 2005, from 6:00 p.m. to 12:00 Midnight at 243 S. Mesa Drive. District #4.

*3b. CHARLIE MCCRAKEN, VICE-PRESIDENT

Special Event License application for Charlie McCracken, Vice-President, National Heritage Foundation, a one-day charitable event to be held on Thursday, May 5, 2005, from 11:00 a.m. to 2:00 a.m. on Friday, May 6, 2005 at 1976 W. Southern Avenue. District #3.

*3c. PAMELA PANOPOULOS, AGENT

Person Transfer Bar License for Dog House Bar, 1241 E. Broadway Road, Suite #17. This is an existing business. This is a Person Transfer from Jim Brian Lundquist, Agent, JSA Investments, LLC, 1241 E. Broadway Road, Suite #17. This license will transfer to the applicant. District #4.

*3d. RICHARD JOHN RZENDZIAN, AGENT

New Beer & Wine Store License for Conoco, 6807 E. Baseline Road. This is an existing business. The license previously held at this location by Yasser Hassan Majed, Agent, Speedmart, Inc., will revert back to the State. District #6.

*3e. MAHMOUD HASSAN MAJED, AGENT

New Beer & Wine Store License for Texaco Star Mart, 1158 W. University Drive. This is an existing business. The license previously held at this location by Rodney S. Herbert, Agent, Reays Ranch Investors LLC, will revert back to the State. District #1.

*3f. JUNG S. YOON, INDIVIDUAL

New Restaurant License for Hodori Soon Tofu Restaurant, 1116 S. Dobson Road, Suite 111. This is an existing business. The license previously held at this location by Sarah Hyun-Ja Chang, Agent, Mikosa LLC, will revert back to the State. District #3.

*3g. RANDY D. NATIONS, AGENT

New Beer & Wine Store License for Sprouts Farmers Market, 5225 E. Southern Avenue. This is new construction. No previous licenses at this location. District #6.

4. Consider the following contracts:

*4a. Medical Oxygen Carts as requested by the Fire Department. (Mesa Contract 2005122)

The Purchasing Division recommends accepting the only qualifying bid received by American Airworks at \$50,155.78, including applicable taxes. (Funding for this purchase is available through the 2004 Metropolitan Medical Response System grant monies.)

- *4b. Additional purchase of Self-Contained Breathing Apparatus as requested by the Fire Department. (Mesa Contract 2005106)

The Purchasing Division recommends authorizing an additional purchase option with the original bidder, First In, Inc., in the amount of \$392,403.00, including applicable taxes. (Funding for this purchase is available through the 2004 Fire Act Grant.)

- *4c. Skid Steer Loader as requested by the Transportation Division Field Operations. (Mesa Contract 2005116)

The Purchasing Division recommends accepting the low responsive bid by Empire Machinery for \$68,153.77, including options, warranty, and applicable taxes.

- *4d. Thirty-three Vehicles as requested by the Police Department. (State Contract #AD 040004-005-A1)

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Five Star Ford at \$830,852.00, including applicable taxes.

- *4e. Laboratory Information Management System for the Utilities Department as requested by the Information Services Division. (Mesa Contract 2004153)

The Purchasing Division endorses the Evaluation Team's recommendation to accept the proposal from Accelerated Technology Laboratories, Inc. for an amount not to exceed \$111,437.71. The Purchasing Division further recommends approving \$11,143.77 for project contingencies (10% of total project, including all hardware and software). The combined total award for these expenses is not to exceed the amount of \$122,581.48.

- *4f. Server hardware as requested by the Information Services Division. (State Contract #A63309)

The Purchasing Division recommends approving:

\$371,892.58 for server hardware from the State of Arizona contract with Hewlett Packard, including applicable taxes.

\$76,001.61 for software from the State of Arizona contract with ASAP Software, Inc., including applicable taxes.

The combined total award for the recommended purchases is \$447,894.19.

- *4g. One-year renewal of contract for electronic database subscriptions used by the Library. (Maricopa County Contract #01120)

The Purchasing Division recommends authorizing the one-year contract renewal of the Maricopa County cooperative purchase contracts for electronic database subscriptions totaling \$148,284.00 based on estimated annual purchases.

- 4h. Ticket Scanners for the Mesa Arts Center as requested by Information Services. (State Contract #AD990005-006)

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Transource Computers for a total of \$31,039.83, including applicable sales tax.

Councilmember Rawles stated that he requested agenda items 4h and 4i be removed from the consent agenda. He explained that in keeping with his previous comments regarding his opposition to the construction, operation and maintenance of the Mesa Arts Center, he would remain consistent in that regard and vote against all related expenditures.

It was moved by Vice Mayor Walters, seconded by Councilmember Jones, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Thom-Walters-Whalen
NAYS - Rawles

Mayor Hawker declared the motion carried by majority vote.

- 4i. Mesa Arts Center Season Brochures as requested by the Community Services Division Mesa Arts Center. (Mesa Contract 2005130)

The Purchasing Division recommends accepting the low bid from Century Graphics for a total of \$135,136.13, including postage and applicable taxes.

It was moved by Vice Mayor Walters, seconded by Councilmember Whalen, that the recommendation of staff be approved.

City Clerk Barbara Jones advised Mayor Hawker that a citizen had submitted a speaker card regarding this item.

Alan Heywood, 1755 S. Horne, a representative of Americopy, a local business, stated that his firm has conducted business in the past with regards to the campaigns of Vice Mayor Walters, Councilmembers Rawles, Jones, Whalen and Griswold and questioned whether there would be a conflict of interest for those individuals. Mr. Heywood also stated that Mayor Hawker's wife works at Americopy. He expressed a series of concerns regarding this contract and stated, among other things, that he was unaware of the bid process and would have liked to have been given the opportunity to participate; that staff had indicated that it was necessary to utilize a web press in order to complete the job, which he indicated is not the case; and that although his and other Mesa businesses would like to participate in future City contracts, Americopy would not bid on this item.

In response to a question from Mayor Hawker, City Attorney Debbie Spinner clarified that if the Councilmembers referenced by Mr. Heywood previously had a business relationship with his firm but no longer use his services, then they would not be required to declare potential conflicts of interest. She noted, however, that because Mayor Hawker's wife is, in fact, employed at Americopy in some capacity, she would recommend that he declare a potential conflict of interest.

Ms. Spinner indicated that if the Council votes on whether or not to approve staff's recommendation, because Americopy did not participate in the bid process, none of the Councilmembers would have a conflict. She added, however, that if the Council considers rejecting all of the bids, Mayor Hawker would most likely have a conflict because of his wife's employment.

Mayor Hawker declared a potential conflict of interest and said he would refrain from discussion/consideration in this agenda item. He yielded the gavel to Vice Mayor Walters for action on this agenda item.

Materials Management Director Ed Quedens provided the Council with a brief overview of this agenda item. He reported that the bid opportunity was advertised in the East Valley Tribune, in the Record Reporter and Bid Net, sent to nine companies registered to receive U.S. mail versions, and companies registered to the category of printing and graphics through the City's web site. He noted that businesses without web presses received the information as well. He added that the bid did not specify a web press, but was "spec based" in that it specified such items as the number of copies, the size of the brochures and the level of ink coverage.

Discussion ensued among the Councilmembers relative to the most appropriate manner in which to proceed with this issue; that it is imperative that the local registered vendors are properly notified of the City's bid process; that if Americopy is a registered vendor and did not receive the bid information, such a "disconnect" between City staff and Americopy should be rectified; and that staff was directed to research this issue further and preferred that the matter be continued to a Special Council Meeting on April 21, 2005.

Vice Mayor Walters and Councilmember Whalen withdrew their motion and second to the motion.

It was moved by Councilmember Whalen, seconded by Councilmember Thom, that this item be continued to a Special Council Meeting on April 21, 2005.

Further discussion ensued relative to the fact that Councilmember Rawles and Vice Mayor Walters no longer have ongoing business relationships with Americopy, but Councilmembers Griswold, Jones and Whalen do.

Vice Mayor Walters called for the vote.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Rawles-Thom-Walters-Whalen
NAYS - None
ABSTAIN - Hawker

Vice Mayor Walters declared the motion carried unanimously by those voting.

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

- *4j. Special Election Sample Ballot/Publicity Pamphlet Printing as requested by the City Clerk's Office.

The Purchasing Division recommends ratifying the emergency purchase from Century Graphics for a total of \$30,645.35, including applicable taxes.

- 4k. FY 2005 Street Improvements – Phase IV, City of Mesa Project No. 04-841-004.

This project will rehabilitate and overlay over 147,600 square yards of residential street pavement. Improvements will also include the construction of 115 sidewalk ramps along the improved streets.

Recommend award to low bidder, FNF Construction, Inc., in the amount of \$1,410,695.00 plus an additional \$141,069.50 (10% allowance for change orders) for a total award of \$1,551,764.50.

Mayor Hawker declared potential conflicts of interest on agenda items 4k and 4l and said he would refrain from discussion/consideration in these agenda items. He yielded the gavel to Vice Mayor Walters for action on this agenda item.

It was moved by Councilmember Rawles, seconded by Councilmember Thom, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Rawles-Thom-Walters-Whalen
NAYS - None
ABSTAIN - Hawker

Vice Mayor Walters declared the motion carried unanimously by those voting.

- 4l. Various Waterline Ties – East 8th Avenue/South Stapley Drive; East Pueblo Avenue/South Ellsworth Road; East Pueblo Avenue/South 93rd Way; East Pueblo Avenue/South 96th Street; and North Hawes Road/Range Rider Trail, City of Mesa Project No. 01-557-002.

This project will connect existing waterlines within these zones to create water system loops and eliminate some existing connections between the zones to establish separate water zones.

Recommend award to low bidder, Behr Drilling, in the amount of \$205,687.48, plus an additional \$20,568.75 (10% allowance for change orders) for a total award of \$226,256.23.

It was moved by Councilmember Thom, seconded by Councilmember Whalen, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Rawles-Thom-Walters-Whalen
NAYS - None
ABSTAIN - Hawker

Vice Mayor Walters declared the motion carried unanimously by those voting.

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

- *4m. Electrical Upgrades at Falcon Well No. 2 (1804 North 46th Street) and City Well No. 12 (32 East 6th Street), City of Mesa Project No. 01-465-001.

This project will upgrade the existing electrical layout and equipment at both sites, improve the site enclosure walls at City Well No. 12 and relocate equipment with both sites for improved accessibility.

Recommend award to low bidder, Weber Group, LC, in the amount of \$329,048.00 plus an additional \$32,904.80 (10% allowance for change orders) for a total award of \$361,952.80.

- 4n. Powell Jr. High School Ball Field Lighting Renovations (855 West 8th Avenue), City of Mesa Project No. 04-080-001.

This project will improve lighting conditions by upgrading existing lighting and installing new fixtures, poles, and electrical service to the ball field.

Recommend award to low bidder, Kimbrell Electric Inc., in the amount of \$119,089.75, plus an additional \$11,908.98 (10% allowance for change orders) for a total award of \$130,998.73. (12% Indian Gaming Revenue Sharing Funds)

Vice Mayor Walters declared a potential conflict of interest and said she would refrain from discussion/consideration in this agenda item.

It was moved by Councilmember Rawles, seconded by Councilmember Whalen, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Rawles-Thom-Whalen
NAYS - None
ABSTAIN - Walters

Mayor Hawker declared the motion carried unanimously by those voting.

- *4o. Mesa Main, Dobson, and Red Mountain Libraries Electronic Security and Access Control, City of Mesa Project No. 02-403-001.

This project will install new electronic security and access control equipment to secure the libraries and limit public access to restricted areas of the libraries. In addition, the fire alarm systems at Mesa Main and Dobson Libraries do not meet current standards and are also being improved as part of this project.

Recommend award to low bidder, Nelson-Holland, Inc., in the amount of \$125,800.82, plus an additional \$12,580.08 (10% allowance for change orders) for a total award of \$138,380.90. (Only one bid received).

5. Introduction of the following ordinances and setting May 2, 2005 as the date of public hearing on these ordinances:

- *5a. Amending various sections of the Mesa City Code regarding the following traffic modifications:

Prohibiting Left Turns From Driveways: 10-3-15 (C)

The west side of Mountain Road between 7:00 a.m. and 3:00 p.m. on school days from the driveway with centerline approximately 225 feet south of Dover Street (east of Signal Butte Road and north of University Drive). District #5.

No Parking: 10-3-24 (D) (Full Time No Parking)

On the east side of 32nd Street from Broadway Road to a point 263 feet south of Broadway Road and on the west side of 32nd Street from Broadway Road to a point 175 feet south of Broadway Road (32nd Street south of Broadway Road). District #2.

- *5b. Amending Section 11-15-2 of the Zoning Ordinance (Title 11 of the Mesa City Code) pertaining to building, parking, drive aisle and landscape setbacks adjacent to arterial streets.

P&Z Recommendation: Approval. (Vote: Passed 6-0-1, Boardmember Carpenter abstaining)

- *5c. **Z05-31 (District 6)** 5416 East Baseline Road. Located north and east of Baseline Road and Higley Road (4.4 ac). Council Use Permit. This request is to allow an Everest College to operate in an existing building zoned C-1. Kurt Waltz, Diessner Development Company, owner; Ralph Pew, Pew and Lake, PLC, applicant.

P&Z Recommendation: Approval. (Vote: Passed on consent)

- *5d. **Z05-32 (District 1)** 2711 N. Horne. Located north and east of McKellips Road and Horne Road (3.19 ac.). Rezone from R1-43 to R1-43 PAD and Site Plan Review. This case is to allow for a three-lot residential subdivision. Marlin Porter, owner/ applicant.

P&Z Recommendation: Approval. (Vote: Passed on consent)

- *5e. **Z05-33 (District 6)** The 9200 block of East Southern Avenue (south side) and the 1200 block of South Ellsworth Road (east side). Located south of Southern Avenue and east of Ellsworth Road (20.83 ac.). Site Plan Modification. This case is to allow for a Lowe's home improvement store with commercial pads. Ray Downs, owner; Don Andrews, applicant.

P&Z Recommendation: Approval. (Vote: Passed on consent)

- 5f. **Z05-34 (District 3)** 2950 South Alma School Road. Located south and west of Alma School Road and Guadalupe Roads (1.63 ac). Site Plan Modification. Development of a Dairy Queen restaurant and pad building. SWC Guadalupe and Alma School Road Ltd Partnership (Gary Davidson), owners; Paul Gilbert, applicant. **LEGAL PROTEST FILED.**
¾ VOTE REQUIRED.

P&Z Recommendation: Approval. (Vote: Passed 5-1-1, Boardmember Esparza voting nay, Saemisch abstaining.)

Reese Anderson, an attorney with Snell and Wilmer, 400 E. Van Buren, Phoenix, representing the applicant, provided a brief historical overview of the case and clarified that no legal protest has been filed in this matter. He acknowledged that the current site plan is an improvement over previous proposals, but stated that his client would prefer that Pad B be rotated in such a manner as to create a more pleasing site overall, provide four rows of common parking and also preserve the site lines to the back of the development.

Mayor Hawker requested that staff research whether a legal protest was actually filed in this matter.

In response to a question from Councilmember Rawles, Mr. Anderson clarified that his firm has been in contact with City staff to apprise them of his client's suggestions for the site plan modifications.

It was moved by Councilmember Thom, seconded by Councilmember Rawles, that the above-referenced ordinance be introduced and that May 2, 2005 be set as the date of public hearing on the ordinance.

Carried unanimously.

- *5g. **Z05-35 (District 1)** The 3000 block of East McKellips Road. Located south and east of McKellips Road and Lindsay Road (3.7 ac). Site Plan Modification. This request is to allow development of a restaurant building. Wayne Wyatt, owner; Chris Neal, Neptune Design Group, applicant.

P&Z Recommendation: Approval. (Vote: Passed on consent.)

- *5h. **Z05-36 (District 1)** The 1200 to 1300 block of East McKellips Road (south side) and the 1800 to 1900 block of North Stapley Drive (east side). Located south and east of McKellips Road and Stapley Drive (10.25 ac). Site Plan Modification. This request to develop commercial retail buildings. Ryan Gaston, Barclay Group, owner; Martin Flood, applicant.

P&Z Recommendation: Approval. (Vote: Passed on consent.)

- *5i. **Z05-37 (District 5)** The 3700 block of East McLellan Road (north side). Located south and east of McKellips Road and Val Vista Drive (22.64 ac). Rezone from R1-35 to R1-35 PAD and Site Plan Review. This request is to allow for the development of a gated single-residence subdivision. Jeff Blandford, owner/applicant.

P&Z Recommendation: Approval. (Vote: Passed 6-0-1, Boardmember Mizner absent for the vote.)

- *5j. **Z05-38 (District 5)** The 4200 to 4400 block of East Brown Road (north side). Located west and north of Greenfield Road and Brown Road (3.3 ac). Site Plan Modification. This request is to allow development of three office buildings. David Gillette, FCF UTAH, LLC and Dr. Douglas A. Bobb, Legacy Investments, L.L.C., owner; Allen Willis, Amberwood Homes, applicant.

P&Z Recommendation: Approval. (Vote: Passed on consent.)

- *5k. **Z05-39 (District 6)** Properties located between the Signal Butte Road alignment and Mountain Road, and between the Galveston Road alignment and 1320' north of Warner Road (558± ac). Rezone from R1-43 to R1-6 (conceptual R-2 and PF), R1-6 PAD, R1-7 PAD, and R-2 PAD all within the Mountain Horizons Development Master Plan. This request is to allow the development of a residential master-planned community. Pulte Homes (Tim Loughrin), owner; Sean Lake, Pew & Lake, PLC, applicant.

P&Z Recommendation: Approval. (Vote: Passed 7-0.)

- *5l. **Z05-40 (District 6)** The 4700 to 4800 block of East Baseline Road (north side). Located north and west of Baseline Road and Higley Road (12 ac). Rezone from AG to PEP PAD and Site Plan Review. This request is to allow for the development of an industrial office complex. Frank Richards, owner; Steve Nevala – Cawley Architects, applicant.

P&Z Recommendation: Approval. (Vote: Passed on consent.)

- 5m. **Z05-23 (District 1)** 851 E. Main Street. Located south and west of Main Street and Stapley Road (1± ac.). Council Use Permit. This request is to allow a day labor business. Ron Walters, owner; David Naja (Able Body Labor), applicant.

P&Z Recommendation: Denial. (Vote: Passed 6-1, Boardmember Carpenter voting nay.)

Alice Ford, 258 N. Horne, an area resident, expressed a series of concerns regarding this case and questioned why Planning Director John Wesley has “waffled” on the City’s position regarding the Council Use Permit application. She stated that the Planning and Zoning Board (P&Z) recommended denial of the project, yet at the April 4, 2005 Regular Council Meeting, Mr. Wesley gave a “shaky recommendation” for the case and failed to communicate to the Council various issues considered by P&Z during their discussion of this matter.

Kim Clarkson, 1457 E. Pepper Place, stated the opinion that the drafting of the ordinance, which includes a one-year review of the day labor business, is inappropriate. She voiced concerns

that the business would be required to share a restroom with a neighboring church and also noted that she is aware of incidents involving individuals loitering in the area.

Ashley Clarkson, 1457 E. Pepper Place, concurred with the comments of the above-referenced speakers.

Mayor Hawker stated that he received speaker cards from the following individuals who are opposed to the case, but did not wish to address the Council:

Jamerson Coburn	1427 S. Date
Ava Coburn	1307 S. Date
Barry Foster	1307 S. Date
Dawna Hulet	635 E. 1 st Place
LeAnne Pearce	1247 E. Inca

Mayor Hawker declared the public hearing closed.

Mayor Hawker commented, in response to Ms. Ford's inquiries, that at the April 4, 2005 Regular Council meeting, he voted in support of staff preparing an ordinance for Council consideration because, in his opinion, the business is a legal use. He explained that the ordinance includes a Council Use Permit for Able Body Labor and contains a stipulation that requires a one-year review by the Council to ensure, for example, that no loitering occurs in the area and that Able Body is a good neighbor. Mayor Hawker also stated that additional stipulations may be added to the permit as well. He noted that although he is generally opposed to day labor centers because they often hire illegal immigrants, in this case, the business would verify the identification of the prospective workers to ensure that they are, in fact, U.S. citizens. Mayor Hawker added that although P&Z recommended denial of this zoning case, they are an advisory board to the Council, and it is the prerogative of the Council to overturn such recommendations.

Vice Mayor Walters voiced concerns that the ordinance as currently drafted does not clearly articulate items such as loitering, parking and the location where workers would be picked up. She stated that the stipulations in the ordinance are very broad and make reference to the narrative (which includes language drafted by Able Body) and does not speak to specifics about such issues that she feels are important. Vice Mayor Walters questioned what action the Council could take in reference to the Council Use Permit process.

City Attorney Debbie Spinner clarified that the purpose of the Council Use Permit is for the Council to determine if a specific use is compatible with the surrounding uses and if so, to issue the permit. She explained that the Council could impose certain restrictions to ensure that the use is compatible and said if the applicant violates one of those conditions, the Council could begin the permit revocation process.

Discussion ensued relative to the fact that the Council would not have to wait one year in order to commence the permit revocation process if the applicant violated any of the conditions of the Council Use Permit.

Vice Mayor Walters commented that as the ordinance currently exists, she cannot support it and requested that additional stipulations be included in the document. She suggested that the added conditions prohibit individuals from congregating in the area of the business; include a

requirement for trash pickup and also address the issue of a drive-through pickup, which although she understands would not be done, should be clearly articulated in the stipulations.

Mayor Hawker stated that he would also prefer the inclusion of a stipulation that states if the applicant violated any of the stipulations of the Council Use Permit, as noted by City staff, that the Council could begin the permit revocation process prior to the one-year time period.

Councilmember Jones stated that this has been a difficult case for him because of the public's misconception that the business is a "day labor center" rather than a temporary employment agency. He questioned whether, in fact, this is the most appropriate site for such a business and also voiced concerns regarding the facility sharing a restroom with the neighboring church. Councilmember Jones added that he is not comfortable with the ordinance as currently drafted and concurred with Vice Mayor Walters' suggestions for including additional stipulations in the document.

In response to a question from Mayor Hawker, Ms. Spinner stated that if additional stipulations were added to the ordinance, the agenda item would need to be reintroduced with those changes.

Councilmember Thom noted that the applicant has addressed the Council in the past and explained that Able Body Labor employs skilled trades' people in addition to unskilled laborers. She voiced support for including the additional stipulations in the ordinance and stated that she is willing to give the business a chance to prove itself as a good neighbor in the community.

It was moved by Mayor Hawker, seconded by Councilmember Thom, that staff be directed to reintroduce this agenda item at the May 2, 2005 Regular Council meeting, and that as part of the Council Use Permit, staff add the following stipulations: that no loitering be permitted in front of the building; that the area be well maintained with the trash picked up; that on-site parking be utilized; that no workers be picked up in front of the building on Main Street; and that a permit revocation process be clearly outlined in the event the applicant is in violation of the Council Use Permit prior to the City's one-year review of the business.

Councilmember Rawles commented that the no loitering and littering stipulations are nuisance kinds of issues already defined in the City Code, and encouraged staff to match such Code language to the extent possible in the ordinance regarding those items.

Councilmember Whalen stated that Able Body Labor is currently operating and open for business and questioned under what legal authority the company is allowed to do so.

In responding to Councilmember Whalen's inquiry, Mr. Wesley explained that the business is potentially adding some service it has not provided previously, which is more in the line of day labor. He explained that a Code Compliance officer has been in contact with the business and inquired whether, in fact, Able Body Labor was in compliance, which prompted this process.

Mayor Hawker called for the vote.

Carried unanimously.

6. Consider the following resolutions:

- 6a. Setting May 16, 2005 as the Public Hearing date on the proposed final assessments for the Mesa Town Center Improvement District No. 228 – Resolution No. 8457.

This district was established to provide enhanced municipal services for the Town Center.

Mayor Hawker and Councilmember Whalen declared potential conflicts of interest and said they would refrain from discussion/consideration in this item. Mayor Hawker yielded the gavel to Vice Mayor Walters for action on this item.

It was moved by Councilmember Rawles, seconded by Councilmember Thom, that Resolution No. 8457 be approved.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Rawles-Thom-Walters
NAYS - None
ABSTAIN - Hawker-Whalen

Vice Mayor Walters declared the motion carried unanimously by those voting and Resolution No. 8457 adopted.

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

- 6b. Authorizing the City Manager or his designee to execute the purchase agreement and all documents necessary for the sale of City property at 615 and 627 East University Drive to Word of Grace Ministries – Resolution No. 8458.

Councilmember Whalen declared a potential conflict of interest and said he would refrain from discussion/participation of this agenda item.

It was moved by Vice Mayor Walters, seconded by Councilmember Thom, that Resolution No. 8458 be approved.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Rawles-Thom-Walters
NAYS - None
ABSTAIN - Whalen

Mayor Hawker declared the motion carried unanimously by those voting and Resolution No. 8458 adopted.

7. Consider the following the ordinances:

- 7a. Amending Title 5, Chapter 17, Table 5, of the Mesa City Code relating to Cultural Facility Development Impact Fees – Ordinance No. 4381.

Erin Patterson, a representative of the Home Builders Association of Central Arizona, 3200 E. Camelback Road, Suite 180, expressed opposition to the Cultural Facility Development Impact Fees. She reiterated her comments made at previous meetings that in the opinion of the Homebuilders Association, such fees do not meet the intent of the State statute, which requires that the fees finance a necessary public service. Ms. Patterson also noted that there may be citizens paying the fee who will never utilize some of these facilities. She added that if the Council approves the proposed fees this evening, the Homebuilders Association intends to pursue all of its legal options to challenge said fees.

It was moved by Councilmember Whalen that Ordinance No. 4381 be approved.

Councilmember Whalen expressed support for the modifications to the ordinance, as suggested by Mayor Hawker at the March 21, 2005 Regular Council meeting, to reduce the valuation of the Mesa Southwest Museum's collection due to the fact that two-thirds of the collection was donated to the City. He commented that cultural amenities are part of the heart of any community and, in his opinion, are necessary in order to achieve a balance.

Vice Mayor Walters seconded the motion.

Councilmember Thom expressed opposition to the motion and indicated that the Cultural Facility Development Impact Fees relate more to the Mesa Arts Center than to any other cultural facility. She commented that although some individuals consider museums, the performing arts and the visual arts as necessary components of their lives, in her opinion, such amenities should not necessarily be provided and sustained by government. Councilmember Thom further stated that unless she is mistaken, the intent of having impact fees is to create an ongoing revenue stream for the Mesa Arts Center after it becomes operational.

Mayor Hawker voiced support for the motion, but stated that he did object to the prior ordinance, which included the Mesa Southwest Museum's donations being considered assets for which the community should pay a fee.

Deputy Building Safety Director Jeff Welker responded to a series of questions from the Council regarding this item. He stated, among other things, that when the Council approved the funding for the Mesa Arts Center, it approved \$800,000 in cultural impact fees to be used strictly for change orders or unanticipated cost overruns, and to date, nearly \$200,000 has been expended for such costs; the fact that cultural impact fees, by law, cannot be used to maintain or operate any cultural facility, including the Mesa Arts Center, after its completion, but the funds can only be used to construct new or expand existing facilities; that spending those funds will not increase what it takes a new resident to buy into the cultural impact fee; that other communities such as Gilbert and Phoenix have park impact fees that include cultural assets; and that it is a dilemma for any municipality to apply a fee based on the individual use of city services by every citizen and business and the fact that just because someone may choose not to use certain services, they would not be entitled to a refund of such fees.

Councilmember Rawles voiced opposition to the motion and stated that although he does not deny that cultural facilities are important, in his opinion, they are not a necessary public service as defined in the State statute.

Councilmember Griswold stated that he firmly believes that new growth should pay for itself, but questioned the methodology utilized by staff to develop the fees. He commented that he would probably vote in opposition to this item.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

AYES - Hawker-Jones-Walters-Whalen
NAYS - Griswold-Rawles-Thom

Mayor Hawker declared the motion carried by majority vote and Ordinance No. 4381 adopted.

(Mayor Hawker excused Vice Mayor Walters from the remainder of the meeting at 7:10 p.m.)

*7b. **A04-17 (District 6)** Annexing the SWC of Ellsworth Road and East Florian Avenue (3.37+ acres). Initiated by the property owners (list of property owners attached) – Ordinance No. 4380.

7c. **Z03-64 (District 3)** Northwest corner of Sycamore and Main Street (14.46 ac.). Rezone from C-2 and C-3 to C-2 BIZ and C-3 BIZ and Site Plan Modification. This request is for the development of a bus/light rail transfer lot and park-and-ride facility to serve the Mesa light rail station and to reserve a site for future Transit Oriented Development (TOD). Judith A. Klein, Rising Sun, LLC., owner; Jeff Martin, City of Mesa, applicant. **CONTINUED FROM THE MAY 3, 2004, MAY 17, 2004, JUNE 7, 2004, JULY 6, 2004, AUGUST 16, 2004, SEPTEMBER 7, 2004, OCTOBER 4, 2004, DECEMBER 6, 2004, AND FEBRUARY 7, 2005 CITY COUNCIL MEETINGS. THE APPLICANT IS REQUESTING THIS CASE BE CONTINUED TO THE MAY 16, 2005 CITY COUNCIL MEETING.**

P&Z Recommendation: Approval with conditions (Vote: Passed 6-0, Saemisch abstaining).

1. Compliance with the basic development as described in the project narrative and as shown on the site plan and elevations submitted.
2. All street improvements and perimeter landscaping to be installed in the first phase of construction.
3. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication, whichever comes first.
4. Compliance with all City development codes and regulations.
5. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
6. Compliance with all requirements of the Design Review Board.

7. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of future development plans.
8. Transit oriented development is encouraged for the 3.67-acre lot.

Mayor Hawker advised that this item had been removed from the consent agenda due to the fact that Vice Mayor Walters had a potential conflict of interest.

It was moved by Councilmember Griswold, seconded by Councilmember Rawles, that Zoning Case Z03-64 be continued to the May 16, 2005 City Council meeting.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Rawles-Thom-Whalen
NAYS - None
ABSENT - Walters

Mayor Hawker declared the motion carried unanimously by those present.

8. Items from citizens present.

Cindy Mizner, 2516 W. Kiowa Avenue, expressed support for the Riverview at Dobson commercial project and urged Mesa citizens to vote in the May 17, 2005 Special Election. She stressed the fact that the project would set into motion positive land development, generate much needed revenues and create thousands of job opportunities for Mesa residents. She also noted that Councilmember Thom, who voted in support of Mesa's General Plan and the zoning cases that are now the subject of the election, has become "one of the louder voices opposing Riverview." She asked whether it is appropriate to expect an elected official "to stand by a decision that they publicly voted for previously."

Jason Ryan, 2652 E. Oakleaf, Tempe, voiced support for the development of a BMX bike and skateboard facility at Kleinman Park. He stated that several local groups have been working with the Mesa Parks and Recreation Department to create such a park in Mesa, and urged the Council's support in this regard.

Robert D. Terrell, 1643 E. Huber Street, concurred with the comments of the previous speaker. He also stated that public skate parks often discriminate against BMX bike riders, as compared to inline and Rollerblade skaters, and suggested that it may be appropriate for the City to consider modifications to such laws and ordinances.

Mayor Hawker asked Councilmember Thom if she wished to respond to Ms. Mizner's comments.

Councilmember Thom stated that she respects Ms. Mizner's right to address the Council, but does not agree with her opinions.

9. Adjournment.

Without objection, the Regular Council Meeting adjourned at 7:25 p.m.

KENO HAWKER, MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the City Council of Mesa, Arizona, held on the 4th day of April 2005. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

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